

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|------------------------------|---|---------------------------|
| BECKY’S BRONCOS, LLC ; |) | |
| Plaintiff, |) | |
| |) | |
| VS. |) | C.A. No. 1:24-cv-11308-AK |
| |) | |
| TOWN OF NANTUCKET; and |) | |
| NANTUCKET TOWN SELECT BOARD, |) | |
| Defendants. |) | |

**DEFENDANTS’ MOTION TO STRIKE
EXHIBIT 1 [ECF DOC. NO. 40-1] TO PLAINTIFF’S AMENDED COMPLAINT**

NOW COME The Defendants, the Town of Nantucket and its Select Board (collectively, the “Town”) and hereby move to strike the report of Dr. Igor Karagodsky, Ph.D submitted by the Plaintiff, Becky’s Broncos, LLC (“Becky’s Broncos”) as an exhibit to its First Amended Complaint. *See* ECF Doc. No. 40-1. The Court should not consider the report of Dr. Karagodsky in ruling on the Town’s Motion to Dismiss Plaintiffs’ Amended Complaint.¹ As grounds therefore, the Town states as follows:

- This matter arises from Becky’s Bronco’s allegations that the Town’s Rental Vehicle Bylaw, Chapter 58 (“Chapter 58”), and certain amendments to Chapter 58, are discriminatory towards out-of-state interests and/or are anticompetitive.
- Becky’s Bronco’s three-count Amended Complaint, *see* ECF Doc. No. 40, asserts claims under the dormant Commerce Clause (Count I); the Sherman Act, 15 U.S.C. § 1 (Count II); and the Massachusetts Antitrust Act, G.L. c. 93, § 12 (Count III).

¹ While the Town reserves its rights to challenge the introduction of Dr. Karagodsky’s report and testimony under *Daubert* or on procedural grounds at a later, more appropriate stage in these proceedings, including, if applicable, summary judgment, the relief sought in the instant motion is to strike Dr. Karagodsky’s report from consideration at the pleadings stage. The Town thus reserves all rights and will renew this motion, if necessary and applicable, at a later stage in these proceedings.

- Appended to Becky's Bronco's Amended Complaint is the report of its proffered expert, Dr. Igor Karagodsky, Ph.D, who offers his opinions regarding the likely implications of Chapter 58 on competition from new car rental agencies as well as his opinions on the likely implications of Chapter 58 on competition among car rental businesses. *See* ECF Doc. No. 40-1 at 10-11.
- This Court should not consider Dr. Karagodsky's opinions in determining whether Becky's Bronco's Amended Complaint states a claim under Fed. R. Civ. P. 12(b)(6).
- Under the law of the First Circuit, expert reports should not be considered at the pleadings stage. *See Ocean Semiconductor LLC v. Analog Devices, Inc.*, 664 F. Supp. 3d 195, 201 (D. Mass. 2023) (Saris, J.), *citing Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC*, 915 F.3d 743, 755-56 (Fed. Cir. 2019).
- Further, and unlike the other documents appended to Becky's Bronco's Amended Complaint, Dr. Karagodsky's expert report is not a public record which may typically be considered at the pleadings stage. *See Athena Diagnostics, Inc.*, 915 F.3d at 755 (holding district court (Talwani, J.) did not abuse its discretion in declining to consider the expert report and convert the motion into one for summary judgment in ruling on motion to dismiss).

As further grounds in support of this Motion, the Town submits the attached memorandum of law in support, which is incorporated herein by reference.

WHEREFORE, the Town respectfully requests that this Honorable Court strike the report of Dr. Karagodsky, ECF Doc. No. 40-1, and decline to consider the report in ruling on the Town's Motion to Dismiss under Fed. R. Civ. P. 12(b)(6).

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

Undersigned counsel for the Defendants hereby certifies, pursuant to Local Rule 7.1(A)(2), that on July 31, 2025, counsel conferred in good faith with counsel for the plaintiffs in an effort to resolve the issues related to Defendant's Motion to Strike Exhibit 1 to Plaintiffs' Amended Complaint.

REQUEST FOR ORAL ARGUMENT

The Defendants believe that oral argument may assist the Court in resolving the issues raised herein and, therefore, wish to be heard. L.R. 7.1(d).

Respectfully submitted,

The Defendants,
TOWN OF NANTUCKET; and
NANTUCKET TOWN SELECT BOARD,
By their Attorneys,

PIERCE DAVIS & PERRITANO LLP

/s/ Matthew J. Hamel

Jason W. Crotty, BBO #656313
Matthew J. Hamel, BBO #706146
10 Post Office Square, Suite 1100N
Boston, MA 02109
(617) 350-0950
jcrotty@piercedavis.com
mhamel@piercedavis.com

Dated: July 31, 2025

CERTIFICATE OF SERVICE

I hereby certify that the foregoing, filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on July 31, 2025

/s/ Matthew J. Hamel

Matthew J. Hamel